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MEMORANDUM

This memorandum lists the instructions the Tennessee Pattern Jury Instruction Committee (Criminal) changed or created after the 15th edition of the book was published in 2011. The Administrative Office of the Courts' website includes Word and WordPerfect "without comments and footnotes" versions of the instructions at issue. The "with comments and footnotes" version of newly-created instructions 10.05(d) and 30.17(b) are attached to this memorandum.

4.04 – Soliciting Minors to Engage in [Certain Conduct]

- a. Renumber as 10.22.

6.02 – Aggravated Assault

- a. In Part A on page 62, delete the period at the end of element (2)(b), substitute a semi-colon, and add the following text after element (2)(b):

or

(c) **Only for offenses committed on or after 7/1/11:** that the defendant attempted or intended to cause bodily injury to another by strangulation.

- b. Following the term "attempted" in this new language, add a footnote with the following text: The trial judge may wish to charge Criminal Attempt in appropriate fact situations. See T.P.I. – Crim. 4.01 (Criminal Attempt).
- c. Add the following as a new definition in brackets immediately prior to the definition of "transportation system": ["Strangulation" means intentionally impeding normal breathing or circulation of the blood by applying pressure to the throat or neck or by blocking the nose and mouth of another person.]
- d. Following the closing bracket of the definition of "strangulation" add a footnote with the following text: T.C.A. § 39-13-102(a)(2).
- e. Delete Comment 1 and substitute the following:

Aggravated assault under subsection (d) is a Class A misdemeanor. Aggravated assault under subdivision (a)(1)(A) or subsection (b) or (c) is a Class C felony. Aggravated assault under subdivision (a)(1)(B) is a Class D felony. However, if an offense under subdivision (a)(1)(A) or (B) or subsection (c) is committed against a law enforcement officer, then the maximum fine shall be fifteen thousand dollars (\$15,000). T.C.A. § 39-13-102(e)(1).

- f. Delete Comment 2 and renumber the remaining comments.

6.03 – Reckless Endangerment

- a. Following element three on page 70, add the following new text:

[and

- (4) **Only for offenses committed on or after 1/1/12:** that the defendant discharged a firearm into an *[occupied] [unoccupied]* habitation.]
- b. Immediately following the existing definition of “Deadly Weapon” on page 70 insert the definition of “Firearm” in brackets. Insert the footnote outside the closing bracket. The definition and footnote can be found in TPI 36.09 on page 1092.
- c. Immediately following the definition of “Firearm” insert the definition of “Habitation” in brackets. Insert the footnote outside the closing bracket. The definition and footnote can be found in TPI 14.01 on pages 515-16.
- d. Immediately following the definition of “Habitation” insert the definition of “Occupied” in brackets. Insert the footnote outside the closing bracket. The definition and footnote can be found in TPI 14.01 on page 516.
- e. Add the following text to the end of Comment One: Reckless endangerment by discharging a firearm into a habitation is a Class C felony, unless the habitation was unoccupied at the time of the offense, in which event it is a Class D felony. T.C.A. § 39-13-103(b)(3).

7.01 – First Degree Murder – Premeditated (on or after 7/1/95)

- a. In Comment 3 on page 95, delete “See State v. Chuncy Lesolue Hollis, No. W2009-02302-CCA-R3-CD (Tenn. Crim. App., filed Jan. 25, 2011, at Jackson)” and substitute “See State v. Hollis, 342 S.W.3d 43 (Tenn. Crim. App. 2011).”

7.04(a) – First Degree Murder Punishment (on or after 7/1/95)

- a. Following aggravating circumstance 16 on page 108, add the following new text:

[(17) The murder was committed at random and the reasons for the killing are not obvious or easily understood.] **[Only for offenses committed on or after July 1, 2011]**

- b. Add a footnote with the following text after the closing bracket of this new language: Tenn. Pub. Acts 2011, ch. 489, effective July 1, 2011.
- c. At the end of the second option under aggravating circumstance 14 on page 107, insert the following text after “on or after July 1, 1998” and inside the closing bracket: “, but prior to July 1, 2011.”

7.04(b) – First Degree Murder Punishment (on or after 7/1/95)

- a. Following aggravating circumstance 16 on pages 123-24, add the following new text:
[(17) The murder was committed at random and the reasons for the killing are not obvious or easily understood.] **[Only for offenses committed on or after July 1, 2011]**
- b. Add a footnote with the following text after the closing bracket of this new language: Tenn. Pub. Acts 2011, ch. 489, effective July 1, 2011.
- c. At the end of the second option under aggravating circumstance 14 on page 123, insert the following text after “on or after July 1, 1998” and inside the closing bracket: “, but prior to July 1, 2011.”

10.05(d) – Statutory Rape by an Authority Figure

- a. New instruction

10.08 – Promoting Prostitution

- a. In footnote 9 on page 270, delete T.C.A. § 39-13-512(5) and substitute T.C.A. § 39-13-512(6).
- b. In footnote 13 on page 270, delete T.C.A. § 39-13-512(6) and substitute T.C.A. § 39-13-512(7).

10.09 – Prostitution

- a. In footnote 5 on page 273, delete T.C.A. § 39-13-512(5) and substitute T.C.A. § 39-13-512(6).
- b. In footnote 8 on page 274, delete T.C.A. § 39-13-512(6) and substitute T.C.A. § 39-13-512(7).

10.10 - Patronizing Prostitution

- a. In Parts A, B and C on pages 276-77, delete the bracket following the last element and insert the following new element (it will be element 3 for Part A and element 4 for Parts B and C):

[and

(insert element # here) **Only for offenses committed on or after 6/1/11:** that the person [was younger than eighteen (18) years of age] [had an intellectual disability].]

- b. Add the following text to the end of Comment One: Patronizing prostitution from a person who is younger than eighteen (18) years of age or has an intellectual disability is a Class E felony. T.C.A. § 39-13-514(b)(4)(A).
- c. In footnote 5 on page 278, delete T.C.A. § 39-13-512(5) and substitute T.C.A. § 39-13-512(6).
- d. In footnote 8 on page 278, delete T.C.A. § 39-13-512(6) and substitute T.C.A. § 39-13-512(7).

21.05 – Distribution of Tobacco Products to Minor

- a. In footnote 3, delete 39-17-1503(6) and substitute 39-17-1503(10).

30.15 – Terrorism

- a. Add the following, in brackets, at the end of the instruction: [It is not a defense that the defendant felt justified in committing these acts for religious reasons.]

- b. After the closing bracket, add a footnote with the following text: T.C.A. § 39-13-809.

30.16 – Violation of Weapons of Mass Destruction Law

- a. Add the following, in brackets, after the definition of “recklessly” on page 867: [It is not a defense that the defendant felt justified in committing these acts for religious reasons.]
- b. After the closing bracket, add a footnote with the following text: T.C.A. § 39-13-809.

30.17 – Providing Support or Resources for Terrorism

- a. Renumber as 30.17(a) and add “(for offenses committed prior to 7/1/11)” to the title of the instruction.
- b. Add the following, in brackets, after the definition of “recklessly” on page 870: [It is not a defense that the defendant felt justified in committing these acts for religious reasons.]
- c. After the closing bracket, add a footnote with the following text: T.C.A. § 39-13-809.

30.17(b) – Providing Support or Resources for Terrorism

- a. New instruction

30.18 – Distribution or Delivery of Substance as Act of Terrorism or Hoax

- a. Add the following, in brackets, at the end of the instruction: [It is not a defense that the defendant felt justified in committing these acts for religious reasons.]
- b. After the closing bracket, add a footnote with the following text: T.C.A. § 39-13-809.

34.01 – Producing, Importing, etc. Obscene Material or Exhibition

- a. In footnote 9, delete 39-17-901(2) and substitute 39-17-1002(1).

34.02 – Using Minors to Import, etc. Obscene Material or Exhibition

- a. In footnote 10, delete 39-17-901(2) and substitute 39-17-1002(1).
- b. Add a new comment with the following text: If there is a question as to the meaning of “contemporary community standards,” the trial judge may wish to refer to the case law on this topic set out in Comment 3 of T.P.I. – Crim. 34.01.

34.03(a) – Sexual Exploitation of a Minor (prior to 7/1/05)

- a. Delete elements 1 and 2 on page 991 and substitute the following:
 - (1) that the defendant possessed material that includes a minor engaged in *[sexual activity]*
[simulated sexual activity that is patently offensive];
and
 - (2) that the defendant did so knowingly.
- b. In subsection (C) of the definition of “sexual activity” on page 993, substitute “contact” for “conduct” and delete the commas which appear around “or touching of”.

- c. Following the definition of “community” on page 993, insert the definition, in brackets, of “simulated sexual activity” as it appears on page 1006. Insert the footnote as well, including the footnote citation change discussed in the summary for 34.05 below.
- d. Add a new comment with the following text: If there is a question as to the meaning of “contemporary community standards,” the trial judge may wish to refer to the case law on this topic set out in Comment 3 of T.P.I. – Crim. 34.01.

34.03(b) – Sexual Exploitation of a Minor (offenses on or after 7/1/05)

- a. In subsection (C) of the definition of “sexual activity” on page 996, substitute “contact” for “conduct” and delete the commas which appear around “or touching of”.
- b. Following the definition of “community” on page 996, insert the definition, in brackets, of “simulated sexual activity” as it appears on page 1006. Insert the footnote as well, including the footnote citation change discussed in the summary for 34.05 below.
- c. Add a new comment with the following text: If there is a question as to the meaning of “contemporary community standards,” the trial judge may wish to refer to the case law on this topic set out in Comment 3 of T.P.I. – Crim. 34.01.

34.04 – Agg Sexual Exploitation of a Minor

- a. Delete the elements of the offense on page 998 and substitute the following:
 - (1) that the defendant did *[promote] [sell] [distribute] [transport] [purchase] [exchange] [possess with the intent to promote, sell, distribute, transport, purchase or exchange] [obscene] material, which includes a minor engaged in [sexual activity] [simulated sexual activity that is patently offensive];*
and
 - (2) that the defendant did so knowingly.
- b. In subsection (C) of the definition of “sexual activity” on page 1001, substitute “contact” for “conduct” and delete the commas which appear around “or touching of”.
- c. Add a new comment with the following text: If there is a question as to the meaning of “contemporary community standards,” the trial judge may wish to refer to the case law on this topic set out in Comment 3 of T.P.I. – Crim. 34.01.
- d. Following the definition of “community on page 999, insert the definition, in brackets, of “simulated sexual activity” as it appears on page 1006. Insert the footnote as well, including the footnote citation change discussed in the summary for 34.05 below.

34.05 – Esp Agg Sexual Exploitation of Minor

- a. In subsection (C) of the definition of “sexual activity” on page 1005, substitute “contact” for “conduct” and delete the commas which appear around “or touching of”.
- b. In the definition for “community” on page 1006, the first footnote is 11 and the second is 13 instead of 12. The footnote in the “simulated sexual activity/ultimate sexual acts” definition is then 12 and the footnote for the definition of “fellatio” is 13. These errors need to be corrected.
- c. Delete the text of the footnote which appears after the “simulated sexual activity/ultimate sexual acts” definition on page 1006 and substitute the following: T.C.A. § 39-17-901(14)(A).
- d. Delete the elements of this offense on page 1003 and substitute the following:

- (1) that the defendant did *[promote] [employ] [use] [assist] [transport] [permit]* a minor to participate in the *[performance] [production]* of material which includes the minor engaging in *[sexual activity] [simulated sexual activity that is patently offensive]*;
and
- (2) that the defendant did so knowingly.
- e. Add a new comment with the following text: If there is a question as to the meaning of "contemporary community standards," the trial judge may wish to refer to the case law on this topic set out in Comment 3 of T.P.I. – Crim. 34.01.

36.02 – Carrying Weapons During Judicial Proceedings

- a. Immediately prior to the last paragraph on page 1037, add the following new paragraph in brackets. Following the closing bracket, add a footnote with the following text: T.C.A. § 39-17-1306(c)(3).

[It is an exception to this offense that the defendant was in the actual discharge of official duties as a judge, was authorized to carry a handgun pursuant to § 39-17-1351, had successfully completed sixteen (16) hours of POST court security training, had successfully completed eight (8) hours of POST firearm training on an annual basis, and was vested with judicial powers under § 16-1-101.]

40.06(b) – Defense: Self-Defense

- a. At the top of page 1215, the word "character" should not be bolded.

T.P.I. – CRIM. 10.05(d)

STATUTORY RAPE BY AN AUTHORITY FIGURE

Any person who commits the offense of statutory rape by an authority figure is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:¹

- (1) that the defendant had unlawful sexual penetration of the alleged victim or the alleged victim had unlawful sexual penetration of the defendant;

and

- (2) that the victim was at least thirteen (13) years of age but less than eighteen (18) years of age;

and

- (3) that the defendant was at least four (4) years older than the victim;

and

- (4)(a) that the defendant was, at the time of the alleged unlawful sexual penetration, in a position of trust, and used such position of trust to accomplish the sexual penetration;

or

- (b) that the defendant had, at the time of the alleged unlawful sexual penetration, *[supervisory]* *[disciplinary]* power over the victim by virtue of the defendant's *[legal]* *[professional]* *[occupational]* status, and used such power to accomplish the sexual penetration;

or

(c) that the defendant had, at the time of the alleged unlawful sexual contact, *[parental] [custodial]* authority over the victim and used such authority to accomplish the sexual penetration;

and

(5) that the defendant acted either intentionally, knowingly or recklessly.²

"Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of the alleged victim's, the defendant's, or any other person's body, but emission of semen is not required.³

["Cunnilingus" means a sex act accomplished by placing the mouth or tongue on or in the vagina of another.]⁴

["Disciplinary power" means the power to demand obedience through the use or threat of punishment.]⁵

["Fellatio" means a sex act accomplished with the male sex organ and the mouth or lips of another. Intrusion into the alleged victim's mouth is not required.]⁶

["Supervisory power" means the power to direct the actions of another.]⁷

"Victim" means the person alleged to have been subjected to criminal sexual conduct.⁸

"Intentionally" means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.⁹

“Knowingly” means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person’s conduct when the person is aware that the conduct is reasonably certain to cause the result.¹⁰

“Recklessly” means that a person acts recklessly with respect to circumstances surrounding the conduct or the result of the conduct when the person is aware of, but consciously disregards, a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the accused person’s standpoint.¹¹

COMMENTS

1. Statutory rape by an authority figure is a Class C felony. T.C.A. § 39-13-532(b).

2. Although the definitions section, T.C.A. § 39-13-501, enacted in 1989, limited the definitions contained therein to offenses set out in T.C.A. § 39-13-501 to T.C.A. § 39-13-511, the Committee feels that when the offense of statutory rape by an authority figure was created by the legislature in 2006 it was their intent that those definitions apply to this offense as well.

3. A violation of T.C.A. § 39-15-401, child abuse and child neglect, may be a lesser included offense of statutory rape by an authority figure. T.C.A. § 39-15-401(f).

¹ T.C.A. § 39-13-532.

² T.C.A. § 39-11-301(c) and accompanying Sentencing Commission Comment.

³ T.C.A. § 39-13-501(7). See Comment 2.

⁴ This definition is derived from former T.P.I. – Crim. 9.04, Crimes against nature.

⁵ State v. Denton, 149 S.W.3d 1, 18-19 (Tenn. 2004).

⁶ State v. Marcum, 109 S.W.3d 300, 303-04 (Tenn. 2003).

⁷ State v. Denton, 149 S.W.3d 1, 19 (Tenn. 2004).

⁸ T.C.A. § 39-13-501(8). See Comment 2.

⁹ T.C.A. § 39-11-106(a)(18).

¹⁰ T.C.A. § 39-11-106(a)(20).

¹¹ T.C.A. § 39-11-106(a)(31).

T.P.I. – CRIM. 30.17(b)

(for offenses committed on or after 7/1/11)

PROVIDING SUPPORT OR RESOURCES FOR TERRORISM

Any person who *[conspires to provide]* *[provides]* material support or resources for terrorism is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:¹

[Part A:

- (1) that the defendant *[attempted² to provide]* *[conspired³ to provide]* *[provided]* material support or resources to any person;

and

- (2)(a) that the defendant knew that person was *[planning]* *[carrying out]* an act of terrorism in Tennessee;

or

- (2)(b) that the defendant knew that person was *[concealing]* *[attempting to escape after committing or attempting⁴ to commit]* an act of terrorism;

and

- (3) that the defendant acted either intentionally, knowingly or recklessly.⁵]

or

[Part B:

(1) that the defendant [*attempted*⁶ to provide] [*conspired*⁷ to provide] [*provided*] material support or resources to any designated entity;

and

(2) that the defendant had actual knowledge that the entity was a designated entity;

and

(3) that the defendant acted either intentionally, knowingly or recklessly.⁸]

The essential elements necessary to constitute an act of terrorism are (here set out the relevant portions of T.P.I. – CRIM. 30.15).

["Designated entity" means any entity designated by the United States department of state as a foreign terrorist organization in accordance with § 219 of the Immigration and Nationality Act, codified in 8 U.S.C. § 1189, or by the United States department of the treasury as a specially designated national in accordance with 31 CFR part 500.]⁹

"Material support or resources" means any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, transportation, and personnel, except medicine or religious materials.¹⁰ "Expert advice or assistance" means advice or assistance derived from scientific, technical, legal or other specialized knowledge, except legal services provided to a defendant in relation to any action brought pursuant to this part, or pursuant to federal or state law.¹¹ "Training"

means instruction or teaching designed to impart a specific skill, as opposed to general knowledge.¹²

"Intentionally" means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.¹³

"Knowingly" means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.¹⁴

"Recklessly" means that a person acts recklessly with respect to circumstances surrounding the conduct or the result of the conduct when the person is aware of, but consciously disregards, a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the accused person's standpoint.¹⁵

[It is not a defense that the defendant felt justified in committing these acts for religious reasons.]¹⁶

[It is a defense to prosecution for this offense that the material support or resources provided were any financial service, funds transfer, or securities transaction conducted in the ordinary course of business by a financial institution subject to the information sharing, suspicious activity reporting, or currency transaction reporting requirements of the Bank Secrecy Act (31 U.S.C. § 5311 et

seq.), or the U.S.A. Patriot Act (PL 107-56); provided, however, that it is not a defense available to any such institution that acts with the intent to assist, aid, or abet any person planning or carrying out an act of terrorism in Tennessee, or concealing or attempting to escape after committing or attempting to commit an act of terrorism. "Financial institution" shall have the meaning provided in 31 CFR chapter X.¹⁷¹⁸

COMMENTS

1. Providing support or resources for terrorism is a Class A felony.

¹ T.C.A. § 39-13-807(a).

² The trial judge may wish to charge Criminal Attempt in appropriate fact situations. See T.P.I. – Crim. 4.01 (Criminal Attempt).

³ The trial judge may wish to charge Conspiracy in appropriate fact situations. See T.P.I. – Crim. 4.03 (Criminal Conspiracy).

⁴ The trial judge may wish to charge Criminal Attempt in appropriate fact situations. See T.P.I. – Crim. 4.01 (Criminal Attempt).

⁵ T.C.A. § 39-11-301(c) and accompanying Sentencing Commission Comment.

⁶ The trial judge may wish to charge Criminal Attempt in appropriate fact situations. See T.P.I. – Crim. 4.01 (Criminal Attempt).

⁷ The trial judge may wish to charge Conspiracy in appropriate fact situations. See T.P.I. – Crim. 4.03 (Criminal Conspiracy).

⁸ T.C.A. § 39-11-301(c) and accompanying Sentencing Commission Comment.

⁹ T.C.A. § 39-13-803(4).

¹⁰ T.C.A. § 39-13-803(7).

¹¹ T.C.A. § 39-13-803(5).

¹² T.C.A. § 39-13-803(9).

¹³ T.C.A. § 39-11-106(a)(18).

¹⁴ T.C.A. § 39-11-106(a)(20).

¹⁵ T.C.A. § 39-11-106(a)(31).

¹⁶ T.C.A. § 39-13-809.

¹⁷ T.C.A. § 39-13-803(6).

¹⁸ T.C.A. § 39-13-807(c).